IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.Rev.Pet.No. 913 of 1999()

C.C. 87/1997 SESSIONS COURT , ERNAKULAM.
(CRIME NO.109/97 OF KUNNATHUNADU POLICE STATION).

REVN. PETITIONER: DEFACTO COMPLAINANT

KUNJAPPAN, S/O. PALLIPADAN,
AGED 40 YEARS, MOLATHUKUDY HOUSE,
VILANGU KARA, KIZHAKKAMBALAM VILLAGE
KUNNATHUNADU TALUK.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: ACCUSED 1 & 2 AND STATE
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1. **RAJAN, S/O. PAULOSE, AGED 39 YEARS,**
   MECKAMKUNNEL, VILANGU KARA,
   KIZHAKKAMBALAM VILLAGE,
   KUNNATHUNADU TALUK.

2. **JANARDHANAN NAIR, S/O. PARAMESWARAN NAIR,**
   AGED 46 YEARS, SHANMUKHASADANAM,
   @ MAMBILLIL, MALAYIDAMTHURUTHU KARA,
   KIZHAKKAMBALAM VILLAGE, KUNNATHUNADU TALUK.

3. **THE STATE OF KERALA REP.BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.P.SATHISAN
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON 15/10/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO. 913 OF 1999

DATED THIS THE 15th OCTOBER 2007

ORDER

The revision petitioner is the de facto complainant in C.C.No.87/1997 in the court of the Special Judge for trial of offences under Scheduled Caste Scheduled Tribes (Prevention of Atrocities) Act. The accused, charge sheeted for the offence under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be mentioned as 'the Act') and Section 3(1) read with Section 181 of the Motor Vehicles Act were acquitted.

2. The prosecution case is that PW1, the de facto complainant belonged to scheduled caste community/pulaya and that on account of previous animosity on 8-5-1997 at about 1.30 p.m. while PW1 was standing at the Kizhakkambalam-Kavunkaparambu Road in front of the house of one Krishnan Kartha, the accused two in number came to the spot on a motor bike, got down and abused PW1 calling his caste name and also threatened to do away with him. The first accused, who was driving motor bike, was also not having a driving licence.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 12 and Exts.P1 to P7. The defence got

examined DW1.

4. The Sessions Judge found that it is established that PW1 belonged to the scheduled caste community and that the accused are not members of the scheduled caste community and that they belonged to the Christian community and Nair community respectively. The evidence of PW7, Tahsildar who proved Ext.P6 certificate with respect to PW1 and the evidence of PW3, the Village officer, who proved Exts.P2 and P3 certificates do establish the community of the de facto complainant and the accused. It was also found that the accused abused PW1 by calling his caste name and threatened to kick him and bring out his intestines. But the court observed to the effect that it has not been established that PW1 was threatened and abused on account of the fact that he belonged to the scheduled caste community which is the necessary requisite to attract the offence under the Act. It was also found that the investigation was not conducted by a competent officer as the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Rules, 1995(hereinafter to be mentioned as 'the Rules') required that the investigation has to be conducted by an officer not below the rank of a Deputy Superintendent of Police. It was also found that no evidence was

adduced to establish the fact that the first accused was not having a valid driving licence. Hence, the accused were acquitted.

5. I find that so far as the finding of the court below is concerned that the offence under the Act would not be attracted as there is no evidence that PW1 was abused and threatened as he belonged to the Scheduled caste is just erroneous. Abusing a person belonging to the Scheduled caste by calling his caste name, whatever be the motive, I find the offence under Section 3(1)(x) of the Act is squarely attracted. All the same, I find that the prosecution cannot be sustained in view of the fact that Rule 7 specifically mandates that the investigation should be conducted by an officer not below the rank of a Dy.S.P. The investigation herein was conducted by a Circle Inspector of Police. The date of the incident is subsequent to the commencement of the Rules. It has also to be noted that Rule 7 provides that the investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. The above condition stipulated in Rule 7 was incorporated in view of the sensitive nature of the

offence and the possibility of the abuse of the provisions against the accused and also against the victim. I find that Rule 7 of the Rules has been violated and the above is not disputed as well. The contention of the counsel for the revision petitioner is that irregularity in investigation is no reason to acquit the accused when it is established that prejudice is caused, relying on the decision reported in **H.N.Rishbud v. State of Delhi, 1955 SC 196** unless prejudice is caused to the accused and miscarriage of justice has resulted. I find that the fact situation in the above cited decision was entirely different. In the circumstances of the present case where there is a specific provision with respect to investigation by a particular officer specified in the statute, prejudice is a necessary concomitant in case of violation of the mandatory statutory provision. Hence, I find that no interference is called for in the order of the court below. Acquittal of the accused is confirmed and the revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P. NO. 913 of 1999

ORDER

15-10-2007